APPENDICES

APPENDIX I

OPINIONS OF DISTRICT COURT IN FEDERAL LAND BANK CASES [19]

TRANSCRIPT OF RECORD OF DISTRICT COURT

[Filed in Circuit Court of Appeals May 1, 1939]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR PUERTO RICO

In Equity No. 2229.

THE FEDERAL LAND BANK OF BALTIMORE,
Complainant,

v.

DOMINGA TIRADO, JOHN DOE and RICHARD ROE, THE UNITED STATES OF AMERICA, BANCO POPULAR de PUERTO RICO, RECEIVER for BANCO TERRITORIAL Y AGRICOLA de PUERTO RICO, and CREDITO Y AHORRO PONCENO, Defendants.

FORECLOSURE OF MORTGAGE

[Removed from the District Court of San Juan, Civil No. 27,741.]

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[19] Printed Transcript of the Record in the Circuit Court of Appeals for the First Circuit, filed there on May 1, 1939, upon appeal of the *Federal Land Bank* cases to that court. Cases Nos. 3458 and 3459 in the Circuit Court of Appeals. [Certified copy filed in this court with this Petition for Certiorari, as stated (*ante*, p. 3; Footnote 2) in the Petition.]

* * * * *

ORDER TO CANCEL ATTACHMENT FOR EXTENDED TAXES [pp. 22-24].
[Filed March 10, 1939]

This cause came up to be heard upon the motion for rule to show cause filed by the complainant, The Federal Land Bank of Baltimore, for the cancellation of an attachment levied by the People of Puerto Rico, for the collection of extended taxes, which attachment encumbers the farm mortgaged to the complainant by a deed executed and recorded prior to the date of the Act of the Legislature of Puerto Rico of 1936, which act extended the payment of past due taxes and created a prior lien in favor of such taxes; when prior to the passage of the said act the only lien reserved in favor of the People of Puerto Rico for taxes was limited to taxes for the current year and the three preceding fiscal years.

When the said motion for rule to show cause was filed, the farm above referred to had been sold at public auction, in the above entitled foreclosure proceedings, to the complainant, The Federal Land Bank of Baltimore, which party became aware of the tax lien aforementioned, upon the recordation of its deed of sale, since the attachment was not recorded till some time after the above foreclosure proceedings had been instituted.

On the date and hour set by this court in the rule to show cause directed to the People of Puerto Rico, both the complainant and the People of Puerto Rico, were represented by counsel. At the said hearing the counsel for the People of Puerto Rico objected to the cancellation of its attachment on the ground that the act of the Legislature of Puerto Rico authorizing the extension for the payment of past due taxes, expressly provided that taxes thus extended would constitute a lien which would have preference and priority to any other lien constituted after or prior to the date of the extension. The counsel for The Federal Land Bank of Baltimore, although admitting the terms of the provisions of the said act as expressed by

counsel for the People of Puerto Rico, yet raised the question that said act of the Legislature of Puerto Rico was unconstitutional as contrary to the terms of the Organic Act of Puerto Rico, which prohibits the Legislature of passing any law which will impair the obligation of contracts.

Exactly the same question between the same parties here involved had been submitted to this court in the case of The Federal Land Bank of Baltimore *v.* Emiliano Torres Garcia, et als., Equity No. 2284, and both parties agreed in the above entitled cause, to submit this matter under the same arguments and briefs to be filed in the other case hereinbefore referred to.

Now, therefore, under the same conclusions of law expressed by this court in the order to cancel attachments for extended taxes entered on February 27, 1939, in the case of the Federal Land Bank of Baltimore *v.* Emiliano Torres Garcia, et als., Equity No. 2284, this court hereby orders, adjudges and decrees:

That complainant's mortgage and the title acquired in consequence thereto, has priority and preference to the attachment in favor of the People of Puerto Rico for past due extended taxes, and that the only lien for taxes in favor of The People of Puerto Rico, which has priority to complainant's mortgage is for such taxes for the current year and the three preceding fiscal years; yet the complainant, The Federal Land Bank of Baltimore, is liable to the People of Puerto Rico for the payment of taxes on the said farm due and not paid for the current year, at the date of the sale and the three preceding fiscal years, as well as any subsequent taxes.

The Registrar of Property of Guayama, P. R., is hereby ordered and directed to cancel in the books of the registry under his charge, the attachment hereinbefore referred to, as is more specifically set forth in the complainant's motion for rule to show cause.

The clerk of this court shall issue writ of cancellation

to the said Registrar of Property at the written request of the complainant.

Done and ordered at San Juan, Puerto Rico, on March 10, 1939.

ROBT. A. COOPER,
United States District Judge.

TRANSCRIPT OF RECORD OF DISTRICT COURT
[Filed in Circuit Court of Appeals May 1, 1939]

IN THE DISTRICT COURT OF THE UNITED STATES FOR PUERTO RICO.

In Equity No. 2284.

THE FEDERAL LAND BANK OF BALTIMORE,
Complainant,

v.

EMILIANO TORRES GARCIA AND HERMINIO TORRES RUIZ, AND AURELIA RUIZ,
Defendants.

FORECLOSURE OF MORTGAGE.

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ORDER TO CANCEL ATTACHMENTS FOR EXTENDED TAXES [pp. 48-50]
[Filed February 27, 1939.]

This cause came up to be heard upon the motion for

rule to show cause filed by the complainant, The Federal Land Bank of Baltimore, for the cancellation of two attachments levied by the People of Puerto Rico for the collection of extended taxes, which attachments encumber two of the three farms mortgaged to the complainant by a deed executed and recorded prior to the date of the Act of the Legislature of Puerto Rico of 1936, which extended the payment of past due taxes and created a prior lien in favor of such taxes, when prior to the passage of the said act the only lien reserved in favor of the People of Puerto Rico for taxes was limited to taxes for the current year and the three preceding fiscal years.

When the said motion for rule to show cause was filed, the three farms above referred to had been sold, at public auction, in the above entitled foreclosure proceedings, to the complainant, The Federal Land Bank of Baltimore, which party became aware of the tax liens aforementioned, upon the recordation of its deed of sale; since the attachments were not recorded till some time after the above foreclosure proceedings had been instituted.

The sole question presented in this case is accurately stated in the briefs filed by both complainant and the People of Puerto Rico. The issue in this case may be stated as follows: has the Legislature of Puerto Rico the power, by extending past due taxes, to declare that taxes so extended shall constitute a lien prior to a mortgage which, before the Legislation, was a lien prior to all taxes except taxes for the current year and the three preceding fiscal years.

Counsel for the People of Puerto Rico have cited numerous authorities but as I read them none of them are applicable to this case. No one could question the power of the Legislature of Puerto Rico to levy, for any years succeeding the execution of a mortgage, such taxes as the necessities of the Government require, and the taxes so levied would constitute a prior lien. The question here, however, involves the right, by extending the time of pay-

ment of past due taxes, to thereby create a prior lien, in favor of such taxes, which did not exist before. This I am satisfied they can not do as it would be a violation of the terms of the Organic Act which prohibits the Legislature from passing any law which will impair the obligation of contracts.

There is no doubt but that the Legislature of Puerto Rico has authority to extend the payment of past due taxes and such extension will not deprive the Government of its tax lien as it existed at the time of extension. The act extending taxes and creating a prior lien for the collection thereof would be good as against any mortgage executed subsequently to the passage of such act. What I mean to hold in this case is that taxes, which were past due at the time the Act of 1936 was passed, and were thereby extended, and which had lost as against a mortgagee, the prior lien originally given, can not now by being extended over a period of years be given a lien superior to the mortgage executed before the Act was passed. . . .

The complainant is entitled to an order directing the Registrar of Property to cancel the attachments referred to in its motion; yet such cancellation does not relieve the complainant from its liability to the People of Puerto Rico for the payment of taxes on said properties accrued and not paid for the current year, at the date of the sale, and the three preceding fiscal years, as well as any subsequent taxes.

Therefore, it is hereby ordered, adjudged and decreed that complainant's mortgage, and the title acquired in consequence thereto, has priority and preference to the attachments in favor of the People of Puerto Rico for past due extended taxes, and that the only lien for taxes in favor of the People of Puerto Rico which has priority to complainant's mortgage is for such taxes for the current year and the three preceding fiscal years.

The Registrar of Property of Mayaguez is hereby or-

dered and directed to cancel in the books of the registry under his charge, the attachments hereinbefore referred to.

The clerk of this court shall issue writ of cancellation to the said Registrar of Property at the written request of the complainant.

Done and ordered at San Juan, Puerto Rico, this twenty-seventh day of February, 1939.

ROBT. A. COOPER,
United States District Judge.

APPENDIX II

OPINION OF CIRCUIT COURT OF APPEALS, FIRST CIRCUIT; 108 F. (2d) 275, *et seq.*

OCTOBER TERM, 1939

No. 3458.

THE PEOPLE OF PUERTO RICO,
APPELLANT,
v.
FEDERAL LAND BANK OF BALTIMORE,
PLAINTIFF, APPELLEE.

No. 3459.

SAME *v.* SAME.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PUERTO RICO.

BEFORE WILSON, MAGRUDER AND MCLELLAN, JJ.

OPINION OF THE COURT.

December 15, 1939.

MAGRUDER, J. The plaintiff bank in these two cases became the holder of real estate mortgages given to secure long-term loans. At the times when the bank acquired these security interests, 1928 in the first case and 1925 in the second, Puerto Rico had an unusual provision of law relating to liens for real estate taxes. Section 315 of the Political Code provided:

"... The tax that is assessed for the current fiscal year, and for the three prior fiscal years, against each piece or parcel of real property, including any improvements that may be thereon, or that may be subsequently placed thereon, shall constitute the first lien thereon, and shall be prior to all other liens whatsoever on said property, whether the said liens attach before or after the lien of said taxes: ..."

As the law then stood, this prior lien would lapse after

a tax had been more than three years in arrears, which tended to bring about a rather prompt collection of taxes, by tax sales if necessary. Depressed economic conditions prompted the passage of the **Act of July 16, 1936,** which authorized the Treasurer of the Island, upon application by any taxpayer owing real estate taxes for 1934-1935 or preceding years, to defer the collection of such taxes and extend the time for payments thereon over a period of twenty years in equal annual installments. Section 5 of this Act reads:

"The amount of the deferred-tax receipts issued under this Act shall constitute a preferred lien on the property subject to the unpaid and deferred tax. This lien shall have preference and priority over any other lien which already burdens or may be hereafter constituted on said properties. The term of duration of this lien for taxes levied on real property, which is established by Section 315 of the Political Code, . . . is extended for a period of twenty (20) years and shall not be extinguished until the deferred taxes and the interest thereon have been totally paid; . . ."

In 1937 the bank instituted these suits to foreclose the mortgages above mentioned. Jurisdiction in the federal district court was based upon the Act of June 16, 1933, 48 Stat. 184, 12 U. S. C. §632. The People of Puerto Rico levied attachments on the mortgaged properties, to cover installments due on "extended" taxes. After decreeing foreclosure and sale to satisfy the claims of the plaintiff bank, the court, on motion of the bank, ordered the People of Puerto Rico to show cause why the attachments for extended taxes should not be cancelled. After hearing, the court decreed in each case that such attachments should be cancelled and "that the only lien for taxes in favor of the People of Puerto Rico which has priority to complainant's mortgage is for taxes for the current year and the three preceding fiscal years." These are the decrees now appealed from.

The District Court thought that the Act of 1936 was invalid as "a violation of the terms of the Organic Act which prohibits the Legislature from passing any law which would impair the obligation of contracts." 48 U. S. C. §737.

We believe that the Act is valid and that the attachments for extended taxes take priority over the mortgages held by the bank. [*Emphasis supplied*]

There has been no impairment of the obligation of contract. In each case the obligation of the debtor to pay off the mortgage note in the installments originally specified remains unimpaired, and the full interest of the mortgagor in the property remains pledged to the fulfillment of this obligation. But the mortgagor's interest was always subject to the paramount taxing power of the Territory. *Baldwin* v. *Moroney*, 173 Ind. 574, 583-84, 91 N. E. 3, 7. A lien for taxes attaches to the land itself, irrespective of whatever subdivision of beneficial or security interests may exist therein.

Appellee concedes that its vested mortgage interest may, even by subsequent legislation, be subordinated to a lien for taxes levied on the land, where the lien is established in support of taxes imposed and accruing from and after the date of such legislation. *Wabash E. Ry. Co.* v. *Commissioners*, 134 Ill. 384, 25 N. E. 781; *German Savings & Loan Society* v. *Ramish*, 138 Cal. 120, 124-125; *Murphy* v. *Beard*, 138 Ind. 560, 38 N. E. 33; see *Provident Institution for Savings* v. *Mayor and Aldermen*, 113 U. S. 506, 514-16; Note, 30 L.R.A. (N.S.) 762. We decided nothing to the contrary in *Domenech* v. *Lee*, 66 F. (2d) 31, which related to excise taxes, not taxes on real estate. It is contended, however, that the legislature cannot, to the prejudice of pre-existing mortgage interests, create a new tax lien or revive an expired one, in support of past-due taxes levied on the land. In our opinion the taxing power is not subject to this limitation. The needs of revenue are served by the collection of delinquent taxes

as well as by the collection of current taxes.

The records in the cases at bar do not indicate what years are covered by the attachments for extended taxes involved in this appeal. If they were for the fiscal year 1934-1935, and perhaps also for the fiscal year 1933-1934, then at the time the taxes were extended the old prior liens given by Section 315 of the Political Code were still valid and subsisting. As to them, the legislature could without question say, as it did in the Act of 1936: "We might enforce these liens now in preference to all other outstanding interests, but to avoid oppressive tax sales in these hard times we shall give the taxpayer the option to apply for a twenty-year extension of the taxes so secured, in which case the liens instead of lapsing within three years shall be extended until the deferred taxes have been paid."

We think the Act of 1936 is equally valid as applied to extended taxes for years as to which the old three-year lien had already lapsed.

Let us assume that the taxpayer failed to pay the taxes assessed for the fiscal year 1931-1932. At the time those taxes accrued and for three years thereafter they constituted a lien on the mortgaged property superior to the lien of the bank. As a matter of indulgence, the tax collector refrained from enforcing the liens. As a matter of grace, the legislature prescribed that the People of Puerto Rico would not insist upon a preference over the outstanding mortgagee's interest for more than three years after the taxes became due. But the mortgagee, whose interest was at all times subordinate to the taxing power, had no vested right to a continuation of this indulgence and of this legislative grace. The Territory has made no contract not to change the lien provisions of the Political Code, Section 315.

Admittedly the legislature in 1930 (which was after the mortgages were executed) could have enacted that real estate taxes assessed for 1931-1932, and thereafter, should

constitute a prior lien on the land, the lien to subsist, not for three years only, but for an indefinite time until the taxes are fully paid. Such a law could not have been successfully challenged, despite the fact that it would have extended the lien for future taxes to the disadvantage of mortgage interests acquired before its passage. We cannot see that it makes any constitutional difference whether the legislature extends the period of the lien before the taxes have accrued, or extends or revives the lien as against the mortgagee after the taxes have accrued. In either case there would come a time, in our assumed case of delinquency for 1931-1932, when the mortgagee would have been freed of the lien, had the law remained as it was when the mortgage was executed; but if, in one case, the legislature by a law passed subsequent to the execution of the mortgage could make the lien available to the Government after the three-year period, so it could in the other. In the one case the bank has not changed its position in reliance on a prospective lapse of the lien for 1931-1932 taxes; in the other, it has not changed its position in reliance upon an accrued lapse. It probably would not alter the result if it had, because the bank is not entitled to assume that the law will remain unchanged. In either case, the legislature is making a reasonable exercise of the taxing power to see to it that each parcel of land bears its fair proportion of the tax burden.

Viewing the matter from another standpoint, the conclusion we have reached is reinforced. The Act of 1936 speaks of extending past-due taxes. The legislature could have accomplished the same result if it had enacted (1) that no further effort will be made to collect unpaid taxes for 1934-1935 and years previous, but (2) that for each of the next twenty years, over and above the annual levies imposed on all land, there shall be superadded a special tax equal to one twentieth of the past delinquencies, with interest. This being a new tax imposed and accruing after the passage of the legislation, the legislature to secure

its collection might lawfully create a lien of indefinite duration superseding existing mortgage interests, provided the tax itself would be valid under the due-process clause.

There could be no doubt of the validity of such an additional tax. It would be levied only on land which in the past has not borne its proportionate share of the tax burden; this fact would justify the classification. *Florida Central R. R. Co.* v. *Reynolds,* 183 U. S. 471; *Seattle* v. *Kelleher,* 195 U. S. 351. In the *Reynolds* case the court upheld a state statute passed in 1885 providing that if any railroad property was not assessed for taxes for the years 1879, 1880 and 1881, it should be the duty of the Comptroller "to cause the same . . . to be assessed for state and county taxes, and 20 per centum of the taxes so assessed for said years and now unpaid shall be collected at the same time the taxes for the year 1885 shall be assessed and collected, and each year thereafter an additional 20 per centum of said taxes shall be collected at the same time and in the same manner as the taxes for such year are collected, until the whole amount of said unpaid taxes for the years 1879, 1880 and 1881 are paid." In the *Kelleher* case a street was opened up and a special assessment levied by the city. This assessment was held void. Later a parcel of land, benefited by the improvement, was sold, then mortgaged, then bought in by the plaintiff on foreclosure. Subsequently a statute was passed authorizing a new assessment upon the lands benefited. A "reassessment" was ordered by city ordinance. This assessment was held valid, it being no objection that it was levied "upon an executed consideration," nor that such assessment included items which under the earlier law were required to be paid for out of general taxation. The benefit had been received, and the land became subject to special assessment therefor under a future exercise of the taxing power. It did not matter that the present owner acquired his title after the earlier assessment

had been held void and before the later enabling act was passed.[1]

Whether the legislature chooses to call the tax an extension of past-due taxes, or an additional levy predicated upon the fact that the land in question had in the past received the general benefit of governmental protectection without having borne its share of the burden, is a mere matter of form, and certainly cannot be decisive of the validity of the prior lien established by the Act of 1936. The legislature has made a valid exercise of the taxing power, and the lien is incidental.

In each case:

The decree of the District Court is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion; appellant recovers costs of appeal.

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[1] The Court said, 195 U. S. at 359, 360: "The charge of planking on the general taxes was not a contract with the land-owners, and no more prevented a special assessment being authorized for it later than silence of the laws at the same time as to how it should be paid for would have. In either case the legislature could do as it thought best. Of course, it does not matter that this is called a reassessment. A reassessment may be a new assessment. Whatever the legislature could authorize if it were ordering an assessment for the first time it equally could authorize, notwithstanding a previous invalid attempt to assess. . . . " It is urged, however, that a different rule could be applied in favor of one who purchased the land under the circumstances stated above. But the attempt to liken taxation, whether general or special, to the enforcement of a vendor's lien, and thus to introduce the doctrine concerning *bona fide* purchasers for value, rests on a fallacy similar to that which we have mentioned above, which would deny the right to tax upon an executed consideration. A man cannot get rid of his liability to a tax by buying without notice."

APPENDIX III

PUERTO RICO STATUTES

Act No. 10, approved August 19, 1933; Laws of 1933, Special Session, pp. 62-68.

AN ACT

Authorizing the Treasurer of Puerto Rico to Defer the Payment of taxes due and pending collection on real property, or which may have been sold for taxes and may be within the legal period of redemption, for the year 1932-33 and preceding years; determining the manner and conditions for such deferment; extending the term of duration of the preferred lien constituted by the taxes which are hereby deferred; authorizing the Treasurer to borrow money and providing the manner for payment of the interest and to redeem the debt contracted; providing funds for the application of this act; and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—The Treasurer of Puerto Rico is hereby authorized to defer the payment of the taxes due and pending collection on real property in Puerto Rico, for the year 1932-33 and preceding years, in the manner and under the conditions provided in this Act, and subject to the regulations that said Treasurer may prescribe in accordance therewith.

Section 2.—Any taxpayer indebted for taxes on real property for the year 1932-33, or preceding years, may apply to the Treasurer of Puerto Rico to defer the collection of such taxes to be paid in installments in the manner prescribed in this Act; *Provided*, That this Act shall also be applicable to all natural and artificial persons whose properties may have been sold for nonpayment of taxes and adjudicated to The People of Puerto Rico and which may be within the legal period of redemption.

Section 3.—The Treasurer of Puerto Rico, upon application by any taxpayer, may, if he is satisfied of the apparent impossibility of the taxpayer to pay the delinquent taxes, authorize the deferment of the collection of the taxes which said taxpayers may owe on real property for the year 1932-33 and preceding years.

The taxes so deferred shall be paid during a term of ten (10) years, beginning July 1, 1934, by tenths; the instalments shall become due July 1 of each year, and the first instalment shall become due July 1, 1934, and the tenth instalment, July 1, 1944.

Section 5.—The amount of the deferred tax receipts issued under this Act shall constitute a preferred lien on the property subject to the unpaid and deferred tax. This lien shall have preference and priority over any other lien which affects or may hereafter affect said properties, and this lien shall not be cancelled until the deferred taxes and interest thereon, shall have been totally paid.

Section 6.—Any natural or artificial person who may acquire properties, whether by purchase, inheritance, donation or otherwise, which are liable for taxes which have been deferred as provided by this Act, shall be subject to all the obligations and privileges provided by this Act.

Section 14.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 15.—This Act, being of an urgent character, shall take effect immediately after its approval.

Act No. 14, approved August 24, 1933; Laws of 1933, Special Session, pp. 76-78.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—With the exception of the taxes on the encumbered property for three years and for the current year, mortgage credits and crop loans are hereby declared to be liens having preference over any other charge or lien for taxes or for any other cause.

Section 2.—The priority or preference among mortgage credits and crop loans shall be the same as now determined by the laws in force.

Section 3.—It is hereby declared that this Act shall have, and has a retroactive effect as regards charges and liens for taxes due, other than property taxes, and to which, in accordance with the provisions of laws prior hereto, there has been given the character of a preferred lien.

Section 6.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 7.—If any clause, paragraph, article, section, or part of this Act shall be declared unconstitutional * * *.

Section 8.—This Act shall take effect ninety days after its approval.

Act No. 23, approved July 16, 1936; Laws of 1936, Special Session, pp. 160-170.

AN ACT

To authorize the Treasurer of Puerto Rico to defer the payment of taxes on real property that are due and pending payment, including those deferred by Act No. 10, of August 19,1933, as amended by Act No. 30, of May 11, 1934, or on property which may have been sold for taxes and is within the legal term for redemption for the year 1934-35 and preceding years; to determine the form and conditions of said deferment; to constitute a preferred lien for the taxes hereby deferred, which lien extends the period of duration of the preference of the lien established by Section 315 of the Political Code, Sections 1823 and 1824 of the Civil Code, Article 168 of the Mortgage Law and Section 1 of Act No. 14, approved August 24, 1933; to declare in force the attachments made for the collection of these taxes until they are paid; to authorize the treasurer to borrow money and to provide for the manner of paying the interest and of amortizing the debt contracted; to appropriate funds for the application of this act, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—The Treasurer of Puerto Rico is hereby authorized to defer the payment of the taxes due and pending payment on real property in Puerto Rico, for the year 1934-35 and preceding years, in the manner and under the conditions provided in this Act, and subject to the regulations that said Treasurer may prescribe in accordance herewith.

Section 2.—Any taxpayer indebted for taxes on real property for the year 1934-35 or preceding years may apply to the Treasurer of Puerto Rico to defer the collection of such taxes, to be paid in instalments in the manner prescribed in this Act; *Provided* That this Act shall also be applicable to all natural or artificial persons whose properties may have been sold for nonpayment of taxes and awarded to The People of Puerto Rico, which are not devoted to the service of the federal, insular, or municipal government, and which may be within the legal year of redemption; *Provided, further,* That this Act shall also be applicable to taxpayers whose delinquent taxes have been deferred under Act No. 10, of August 19, 1933, as amended by Act No. 30, of May 11, 1934.

Section 3.—The Treasurer of Puerto Rico, upon the application of any taxpayer may authorize the deferment of the collection of the taxes which said taxpayer owes on real property for the year 1934-35 and preceding years. The taxes so deferred shall be paid during a term of twenty (20) years, beginning April 1, 1937, by twentieths; the instalments shall become due April 1 of each year, and the first instalment shall become due on April 1, 1937, and the twentieth instalment on April 1, 1957.

Section 4.—The collection of each of the tax receipts on real property the taxes on which may be deferred shall be suspended, and the Treasurer of Puerto Rico shall order that the amount of taxes owed on each of such real properties, not including interest, surcharges, fees for attachment proceedings, and expenses for attachment proceedings, and expenses for notices of public sale, shall be made to appear on a new receipt which shall be called a deferred-tax receipt. These deferred-tax receipts shall be divided into twenty sections, to be collected on the dates hereinbefore provided, and shall bear interest at the rate of three (3) per cent per annum counting from April 1, 1936.

Section 5.—The amount of the deferred-tax receipts issued under this Act shall constitute a preferred lien on the property subject to the unpaid and deferred tax. This lien shall have preference and priority over any

other lien which already burdens or may be hereafter constituted on said properties. The term of duration of this lien for taxes levied on real property, which is established by Section 315 of the Political Code, Sections 1823 and 1824 of the Civil Code, Article 168 of the Mortgage Law and Section 1 of Act No. 14, approved August 24, 1933, is extended for a period of twenty '20) years and shall not be extinguished until the deferred taxes and the interest thereon have been totally paid; *Provided,* That attachments recorded in the registries of property for the collection of said taxes shall remain in force until the amount of the deferred taxes covered by the attachment has been paid.

Section 6.—Any natural or artificial person who may acquire properties, whether by purchase, inheritance, donation, or otherwise, which are liable for taxes which have been deferred under this Act, shall be subject to all the obligations and privileges provided by this Act; *Provided,* That in all cases where deferment is granted for the payment of taxes, in accordance with this Act, the Treasurer of Puerto Rico shall proceed to record in the registry of property the preferred lien constituted by Section 5 of this Act, for the purpose that the succeeding acquirers of the said property may be duly notified thereof, and this lien shall be registered by the registrar of property by means of a marginal note on the respective registration of the properties the taxes on which have been deferred.

Section 7.—It shall be optional for any taxpayer who has taken advantage of the provisions of this Act, to pay in advance any part or the whole amount of the deferred-tax receipts before they become due; *Provided,* That in the case of the sale of a property the taxes on which have been deferred, the Treasurer may require the total payment of the receipts if, in his judgment, the purchaser is able to pay.

Section 8.—It shall be an express condition for such deferment as the Treasurer may make of the delinquent taxes of a taxpayer, that the latter shall pay before December 31, 1936, the taxes assessed for the year 1935-36 and for the first semester of the year 1936-37. As a reward for the faithful fulfilment of the contract of deferment, the Treasurer shall divide into twenty (20)

equal parts the whole amount that the taxpayer owes for interest, surcharges, fees for attachment proceedings, and expenses for notices of public sale, at the time of making the deferment, and shall remit the proportional amount of those corresponding to the instalment or instalments of the deferred debt that the taxpayer may have paid.

Section 9.—If any taxpayer whose taxes have been deferred under this Act fails to pay at maturity the taxes that may have been levied for 1935-36 and for the first semester of the year 1936-37, and those for succeeding years, as they fall due, or fails to pay the corresponding part of the receipt for taxes deferred under this Act, when it falls due, the deferred taxes shall be deemed to have become due and the Treasurer shall collect them by means of attachment proceedings as provided by the Political Code, adding to the amount of the taxes deferred and unpaid, the amount for interest, surcharges, fees for attachment proceedings, and the expenses for notices of public sale that the taxpayer may owe at the time of deferment, less the total amount of the taxes deferred and paid that may have been remitted by the Treasurer, as provided in Section 8 of this Act.

Section 10.*****.

Section 14.—Paragraph 3 of Section 315 of the Political Code, the first subdivisions of Sections 1823 and 1824 of the civil Code, subdivision 5 of Article 168 of the Mortgage Law in force, and Section 1 of Act No. 14, approved August 24, 1933, are hereby expressly amended in so far as they refer to the period within which the liens for taxes owed to The People of Puerto Rico shall have preference and solely in so far as they refer to this deferment of taxes.

Section 15.—If any provision of this Act or its application to any person or under any circumstance is declared null, the rest of the Act and the application of said provision to other persons or under other circumstances shall not be affected.

Section 16.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 17.—This Act, being of an urgent character shall take effect immediately after its approval.

Act No. 122, approved May 13, 1937; Laws of 1937, pp. 275-277.

To amend Sections 3, 4, 8, and 9 of Act No. 23, approved July 16, 1936, entitled "An Act to authorize the Treasurer of Puerto Rico to defer the payment of taxes on real property that are due and pending payment, including those deferred by Act. No. 10, of August 19, 1933, as amended by Act No. 30, of May 11, 1934, or on property which may have been sold for taxes and is within the legal term for redemption, for the year 1934-35 and preceding years; to determine the form and conditions of said deferment: to constitute a preferred lien for the taxes hereby deferred, which lien extends the period of duration of the preference of the lien established by Section 315 of the Political Code, Sections 1823 and 1824 of the Civil Code, Article 168 of the Mortgage Law and Section 1 of Act No. 14, approved August 24, 1933; to declare in force the attachments made for the collection of these taxes until they are paid; to authorize the Treasurer to borrow money and to provide for the manner of paying the interest and of amortizing the debt contracted; to appropriate funds for the application of this act, and for other purposes"; to extend the term within which delinquent taxpayers must pay the taxes owing on real property, so that they may avail themselves of the benefits of the said Act No. 23, and for other purposes.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Sections 3, 4, 8, and 9 of Act No. 23, approved July 16, 1936, entitled "An Act to authorize the Treasurer of Puerto Rico to defer the payment of taxes on real property that are due and pending payment, including those deferred by Act No. 10, of August 19, 1933, as amended by Act No. 30, of May 11, 1934, or on property which may have been sold for taxes and is within the legal term for redemption, for the year 1934-35 and preceding years; to determine the form and conditions of said deferment; to constitute a preferred lien for the taxes hereby deferred, which lien extends

the period of duration of the preference of the lien established by Section 315 of the Political Code, Sections 1823 and 1824 of the Civil Code, Article 168 of the Mortgage Law and Section 1 of Act No. 14, approved August 24, 1933; to declare in force the attachments made for the collection of these taxes until they are paid; to authorize the Treasurer to borrow money and to provide for the manner of paying the interest and of amortizing the debt contracted; to appropriate funds for the application of this Act, and for other purposes," are hereby amended to read as follows:

"Section 3.—The Treasurer of Puerto Rico, upon the application of any taxpayer, his successors, or any of them, or his legal proxy, or attorney, may authorize the deferment of the collection of the taxes which said taxpayer owes on real property for the year 1934-35 and preceding years. The taxes so deferred shall be paid during a term of twenty (20) years, beginning April 1, 1938, by twentieths: the instalments shall become due April 1 of each year, and the first instalment shall become due on April 1, 1938, and the twentieth instalment on April 1, 1958.

"Section 4.—The collection of each of the tax receipts on real property the taxes on which may be deferred shall be suspended, and the Treasurer of Puerto Rico shall order that the amount of taxes owed on each of such real properties, not including interest, surcharges, fees for attachment, proceedings, and expenses for notices of public sale, shall be made to appear on a new receipt which shall be called a deferred-tax receipt. These deferred-tax receipts shall be divided into twenty sections, to be collected on the dates hereinbefore provided and shall bear interest at the rate of three (3) per cent per annum counting from April 1, 1937.

"Section 8.—It shall be an express condition for such deferment as the Treasurer may make of the delinquent taxes of a taxpayer, that the latter shall accompany his application therefor with the amount to pay for at least one year of the taxes assessed for the years 1935-36, 1936-37, and the first semester of the year 1937-38, and that the said delinquent taxpayer shall pay before December 31, 1937, all the taxes assessed for the years 1935-36, 1936-37, and for the first

semester of the year 1937-38. As a reward for the faithful fulfillment of the contract of deferment, the Treasurer shall divide into twenty (20) equal parts the whole amount that the taxpayer owes for interest, surcharges, fees for attachment proceedings, and expenses for notices of public sale, at the time of making the deferment, and shall remit the proportional amount of those corresponding to the installment or installments of the deferred debt that the taxpayer may have paid."

"Section 9.—If any taxpayer whose taxes have been deferred under this Act fails to pay at maturity the taxes that may have been levied for 1935-36, 1936-37, and the first semester of the year 1937-38, and those for succeeding years, as they fall due, or fails to pay the corresponding part of the receipt for taxes deferred under this Act, when it falls due, the taxes owed shall be deemed to have become due and the Treasurer shall collect them by means of attachment proceedings as provided by the Political Code, adding to the amount of the taxes deferred and unpaid, the amount for interest, surcharges, fees for attachment proceedings, and the expenses for notices of public sale that the taxpayer may owe at the time of deferment, less the total amount of the taxes deferred and paid that may have been remitted by the Treasurer, as provided in Section 8 of this Act."

Section 2.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 3.—This Act, being of an urgent and necessary character, shall take effect immediately after its approval.

Political Code, Section 315 [Par. 2967, Comp. of Rev. Stats. and Codes, p. 557].

Sec. 315. (*As amended by Act of March 14, 1907, p. 338.*) That it shall be the duty of the assessor in making the assessment, or in revising the existing assessment, to list each piece or parcel of real estate separately, and to give each its assessed value, together with a description of it, and the name and address of its owner, insofar as such information can be obtained. Where the real property embraces both land and improvements, the assessed value of the land and of the improvements shall

be given separately. The tax that is assessed for the current fiscal year, and for the three prior fiscal years, against each piece or parcel of real property, including any improvements that may be thereon, or that may be subsequently placed thereon, shall constitute the first lien thereon, and shall be prior to all other liens whatsoever on said property, whether the said liens attach before or after the lien of said taxes; * * *.

Mortgage Law, Article 168, subdivision 5 [Par. 6852, Comp. of Rev. Stats. and Codes, p. 1086].

Art. 168. A statutory mortgage is established:

1. In favor of married women * * *.

5. (*As amended by act March 14, 1907, p. 330.*) In favor of The People of Porto Rico and the corresponding municipality on the property of the taxpayers for the amount of the taxes of the three annual assessments and the current unpaid annual assessment of the taxes which burden same.

Civil Code (Ed. of 1930).

Section 1823.—(*Section 1824, Civil Code of 1902, as amended by act of March 10, 1910, page 124 and act of March 9, 1911, page 155*). With regard to certain real property and rights on realty of the debtor, the following shall have preference:

1. Credits in favor of The People of Porto Rico or of the corresponding municipality with regard to the property of the taxpayers for the amounts of the last three annual assessments and the current annual assessment, unpaid, of the taxes which burden the same.

* * *.

Section 1824.—(*Section 1825, Civil Code of 1902, as amended by act of March 10, 1910, page 125 and act of March 9, 1911, page 155.*) With regard to all other personal and real property of the debtor preference shall be given to:

Section 1. Credits in favor of The People of Porto Rico and of the corresponding municipality for the taxes of the last three annual assessments due and the current unpaid annual assessment which are not covered by paragraph one of the preceding section.

APPENDIX IV

CHRONOLOGY

1. Prior to August 19, 1933, under the laws of Puerto Rico, the lien of unpaid real estate taxes,

> "for the current fiscal year, and for the three prior fiscal years",

constituted a first lien on the property, "prior to all other liens whatsoever on such property, whether the said liens attached before or after the lien of said taxes" (*Political Code, enacted March 1, 1902, Section 315, as amended by the Act of March 14, 1907* (*Laws of 1907, p. 338*) [*Comp. of Rev. Stats. and Codes of Puerto Rico, Par. 2967, p. 557*] *in connection with Sections 1823 and 1824 of the Civil Code* (*Ed. of 1930*), *and subdivision 5 of Article 168 of the Mortgage Law of Spain remaining in force in the Island, as amended by the above-mentioned Act of March 14, 1907*, Laws of 1907, p. 330 [*Comp. of Rev. Stats. and Codes of Puerto Rico, Par. 6852, p. 1886*].) Appendix III, *ante*, pp. 57-58.

2. On August 19, 1933, by Act No. 10 of the Special Session of that year (Laws of 1933, Spec. Sess., pp. 62-68; Appendix III, *ante*, pp. 49-50), the Legislature authorized the Treasurer of Puerto Rico to defer the payment of real estate taxes "due and pending collection" for the fiscal years 1932-1933, and preceding years, on the taxpayer's application, and to permit them to be paid in installments over a period of ten years, running from July 1, 1934. Section 5 of the Act provided that such deferred taxes, (Appendix III, *ante*, p. 50),

> "shall constitute a preferred lien on the property subject to the unpaid and deferred tax. This lien shall have preference and priority over any other lien which affects or may hereafter affect said properties, and this lien shall not be cancelled until the deferred taxes and interest thereon, shall have been totally paid."

3. Five days later, on August 24, 1933, Act. No. 14 of

the same Special Session was approved (Laws of 1933, Spec. Sess., pp. 76-78; Appendix III, *ante*, pp. 50-51), providing, in its first section:

> "Section 1. With the exception of the taxes on the encumbered property for three years and for the current year, mortgage credits and crop loans are hereby declared to be liens having preference over any other charge or lien for taxes or for any other cause."

This Act made no express reference to Act. No. 10, above, approved only five days earlier, and it contained the usual general repealing clause (Sec. 6) of "All laws or parts of laws in conflict herewith." It did, nevertheless, contain the following saving provision:

> "Section 3.—It is hereby declared that this Act shall have, and has, a retroactive effect as regards charges and liens for taxes due, *other than property taxes, and to which, in accordance with the provisions of laws prior hereto, there has been given the character of a preferred lien.*" (*Italics supplied*)

4. Three years later, by Act No. 23 of the Special Session of 1936, approved July 16, 1936, carrying an emergency clause [Sec. 17] putting it into effect immediately upon its approval [Laws of Spec. Sess., 1936, pp. 160-170; Appendix III, *ante*, pp. 51-55], the Legislature again authorized deferment of unpaid real estate taxes by the Treasurer, and their receipt in installments; but this time for *twenty years*, to run from April 1, 1937; and again provided, along the same lines as in Section 5 of the earlier Act No. 10 of August 19, 1933, that [Sec. 5, Act No. 23, *supra*, at p. 162; Appendix III, *ante*, pp. 52-53]:

> "Section 5.—**The amount of the deferred-tax receipts** issued under this Act **shall constitute a preferred lien** on the property subject to the unpaid and deferred tax. **This lien shall have preference and priority over any other lien which already burdens or may be hereafter constituted on said properties.**" (*Emphasis supplied*)

And this time the Legislature added the following ex-

press further provision [*Ibid,* Act No. 23, Sec. 5, continuing (at p. 162), immediately following the last sentence above quoted; Appendix III, *ante,* p. 53]:

> "The term of duration of this lien for taxes levied on real property, which is established by Section 315 of the Political Code, Sections 1823 and 1824 of the Civil Code, Article 168 of the Mortgage Law and Section 1 of Act No. 14, approved August 24, 1933, is extended for a period of twenty (20) years and shall not be extinguished until the deferred taxes and the interest thereon have been totally paid;"

and also, by Section 14 (*ib.,* at p. 168; Appendix III, *ante,* p. 54), *expressly* amended all those prior statutes, "Paragraph 3 of Section 315 of the Political Code, the first subdivisions of Sections 1823 and 1824 of the Civil Code, subdivision 5 of Article 168 of the Mortgage Law in force, and Section 1 of Act No. 14, approved August 24, 1933",

> "in so far as they refer to the period within which the liens for taxes owed to The People of Puerto Rico shall have preference and solely in so far as they refer to this deferment of taxes."

5. In the meantime, after the passage of the first two Acts, Nos. 10 and 14, *ante,* of August 10 and August 24, 1933, but before the passage of the last mentioned Act No. 23 of July 16, 1936,—upon the request of the "Comunidad Jose J. Benitez e Hijos", one of the parties to this litigation [more often referred to in this record as "the community"],—the Treasurer had, on or about November 25, 1935,—*before this litigation was instituted,*—deferred the real estate taxes on its property [part of those involved in this case] for the fiscal years 1928-29 to 1932-33, "pursuant to Law No. 10", *ante,* of August 19, 1933 [Recital in foreclosure decree of September 18, 1939; R. 62, 64]; and the Treasurer had likewise, at the same time, on or about November 25, 1935, on the application of the Benitez Sugar Company, another of the parties to this litigation, similarly, under such Act No. 10 of August 19, 1933, deferred

the unpaid taxes on its properties, also among those here involved, for the same fiscal years, 1928-29 to 1932-33 (R. 65).

6. **After the passage of Act No. 23 of July 16, 1936,**[20] the first bill of complaint, of those ultimately consolidated in the consolidated foreclosure suit in which the order here in question was entered,—"Equity No. 2151", by the Bank of Nova Scotia against the community and the Benitez Sugar Company,—was filed, **October 20, 1936** (R. 1-21); and a Receiver was appointed the same day, October 20, 1936 [*Recital in foreclosure decree* of September 18, 1939; R. 36], "who took possession of the property and business of the defendant corporation and the community." The receivership was finally ordered terminated, and the Receiver discharged, some three and a half years later, by the order of April 3, 1940 (R. 98-100), from which the present petitioner, the People of Puerto Rico, took its appeal (R. 100) to the Circuit Court of Appeals.

7. Some six months after the Receiver's appointment, the Legislature by the above-mentioned amendatory Act No. 122 of May 13, 1937 [Laws of 1937, pp. 275-277; Appendix III, pp. 55-57], changed the date from which the 20 year installment payments of deferred taxes should begin to run, under the tax deferment Act No. 23 of July 16, 1936, *supra,* from April 1, 1937 [Sec. 3, Act of July 16, 1936], to April 1, 1938 [Sec. 3 of the Act of 1936, as amended by Sec. 1 of Act No. 122 of 1937],—that is to say, *postponed for one year* the date of the beginning of the twenty year installment period; but made no other change material here in any way in the provisions of Act No. 23 of July 16, 1936.

8. Some two months further along, the District Court made the two orders mentioned in our Petition here (*ante,*

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[20] More than 90 days after its passage, when it had already taken effect, in any event, regardless of its emergency clause.

p. 2), both **on or about July 9, 1937** [*Recitals in foreclosure decree* of September 18, 1939, R. 62, 66] upon petitions, respectively, of the community and of the Benitez Sugar Company, granting permission for filing applications to the Treasurer of Puerto Rico for deferment and payment in the twenty installments of the unpaid real property taxes on the properties of the community and of the Sugar Company, respectively, for the fiscal years 1928-1929 to 1934-1935, inclusive, pursuant to such Act No. 23 of July 16, 1936, as amended by Act No. 122 of May 13, 1937;[21] and, on the Receiver's applications, the Treasurer granted the deferments, in each case, the following year, September 21, 1938 (R. 62, 66).

9. Another year later, on September 18, 1939, as above indicated [*Petition, ante*, pp. 2-3], the foreclosure decree was entered in the consolidated litigation [R. 36-85; "Findings of Fact and Conclusions of Law and Decree"]. In that portion of it dominated "Findings of Fact" are contained the recitals above stated [R. 62, 66], concerning the permission given "on or about July 9, 1937" for filing applications for deferment of the taxes on behalf of the community and of the Benitez Sugar Company, respectively, and of the Treasurer's granting them. In that portion of the decree denominated "Conclusions of Law" [R. 70-76] are con-

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[21] The recital in the foreclosure decree (R. 62, *supra*) with relation to the application on behalf of the community,—*manifestly erroneously*,—is that it was to be made, "*pursuant to Law 23 of the Puerto Rican Legislature approved May 13, 1937, as amended.*" It clearly was intended to read,—like that on behalf of the Sugar Company (R. 66),—

> "pursuant to Law No. 23 of the Puerto Rican Legislature approved July 16, 1936, as amended by Law No. 122 of said Legislature approved May 13, 1937".

Act. No. 23 of 1937 has nothing whatever to do with any of the questions here involved. It is an Act directing the construction of a school building and a school playground at Arecibo (Laws of 1937, pp. 143-145).

tained the "Conclusions" ["V (A) (B) (C) and (D)"; R. 71-72] that,

> "(A) The People of Puerto Rico has valid first liens having preference and priority over any other claims and liens of any kind whatsoever * * * for 'the current fiscal year' and the 'three prior fiscal years', as provided by Section 315 of the Political Code, Section 1823 (1) of the Civil Code (1930 Ed.), Article 168 of the Mortgage Law and Section 1 of Law 14 of the Legislature of Puerto Rico approved August 24, 1933, and it further is entitled to the preference specified in Section 1824 (1) of said Civil Code with respect to all personal and real property of each of said debtors not specified in Sections 1822 and 1823 of said Civil Code."

[Sub-paragraphs "(B)", "(C)" and "(D)" specify which years are the "current" and "three prior" fiscal years, and the amounts of the taxes for those years, to which priority is thus given].

But with relation to the deferred taxes the court found ["Conclusions of Law", *supra,* Par. V.-(E) and Par. VI; R. 72-73] that:

> "V-(E) The People of Puerto Rico did not acquire a lien on the properties of the community and of the corporation, or any of them, superior to nor having preference and priority over the mortgage liens of complainant described in findings 6, 8, 10, 12 and 14 hereof, and referred to in these conclusions, by virtue of the deferment of payment of the unpaid property taxes assessed on said properties for the fiscal years 1928-29 to 1934-35, inclusive, pursuant to Law No. 23 of the Legislature of Puerto Rico, approved July 16, 1936 as amended by Law No. 122, approved May 13, 1937; nor did The People of Puerto Rico acquire a superior lien having preference and priority over said mortgage liens by virtue of the deferment of the payment of the real property taxes assessed on said properties for the fiscal years 1928-29 to 1932-33, inclusive, pursuant to Law No. 10 of said Legislature approved August 19, 1933."

"VI.-(A) Complainant has valid mortgage liens on each of the properties of the said community * * * *.

"(B) Complainant has valid mortgage liens on each of the properties of defendant Benitez Sugar Company * * *.

"(C) Said mortgage liens and chattel mortgage liens referred to in clauses (A) and (B) of this paragraph are, with respect to the said properties upon which constituted, superior to, and have preference and priority over any and all other claims, rights, liens, preferences and priorities of any kind whatsoever, * * * including all claims, liens and preferences of The People of Puerto Rico for taxes owing to it as specified hereinabove, except for the respective amounts of real property taxes specified in clauses (C) and (D) of conclusion V hereof."

10. The decree concluded with the following paragraph designated with the letter "O" (R. 85; Petition, *ante*, p. 4):

"All questions, issues, matters and things not hereby disposed of are hereby reserved by the court for its further adjudication, and any party to this cause may at any time apply to the court for further relief at the foot of this decree in respect of any matters not herein specifically provided for. **For the purpose of making any further order or decree in relation to any matter arising in connection with this decree, or any sale thereunder, the present term of this court is continued.**" (*Emphasis supplied.*)